

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ROBERT J. SCHULLER, et al.

Serial No.: 10/609,446

Filed: June 27, 2003

For: FOOD PRODUCT SCALE-BASED INCENTIVE SYSTEM

Attorney Docket No.: VCI 0430 PUS

Group Art Unit: 3622

Examiner: Jeffrey D. Carlson

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37 AND
PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136(a)**

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Commissioner for Patents
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P.O. Box 1450
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Sir:

Applicant hereby petitions for a two month extension of time to file this Appeal Brief, thereby extending the time period within which to respond to October 11, 2009.

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This is an Appeal Brief from the final rejection of claims 1-6, 9-22 and 28 of the Office Action mailed on February 11, 2009 for the above-identified patent application.

I. REAL PARTY IN INTEREST

The real party in interest is Valassis In-Store Solutions, Inc. ("Assignee"), a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 19975 Victor Parkway, Livonia, Michigan 48152, as set forth in the assignment

recorded in the U.S. Patent and Trademark Office on October 30, 2008 at Reel 021760/Frame 0292.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to the Appellant, the Appellant's legal representative, or the Assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-6, 9-22 and 28 are pending in this application. Claims 1-6, 9-22 and 28 have been rejected and are the subject of this Appeal. Claims 7, 8 and 23-27 have been cancelled.

IV. STATUS OF AMENDMENTS

No amendment after final rejection has been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

This Application has 7 independent claims: 1, 9, 16, 18, 21, 22 and 28.

Claim 1 is directed to an incentive system within a store for providing at least one incentive in relation to an item purchased (e.g., p. 1, ¶ 0005 and Figs. 1 and 2). The incentive system includes a scale located in a department of the store, (e.g., p. 1, ¶ 0005 and Fig. 1), the scale including a weighing device for producing weight indicative signals, (e.g., p. 1, ¶ 0005 and Fig. 1), at least one label printing mechanism for printing labels, (e.g., p. 1, ¶ 0005 and Fig. 1), and an input device for inputting product identifying information for weighed products, (e.g., p. 1, ¶ 0005 and Fig. 1). The scale is adapted for operation in at least one mode in which, in connection with a weighing operation of an item (e.g., p. 1, ¶ 0005 and Fig. 1): (i) a weight dependent price is established for the weighed item and the weight dependent price is printed on

a product label along with a product code (e.g., pp. 1-2, ¶ 0005 and Fig. 5) and (ii) incentive identifying information is printed for at least one incentive items based upon the weighed item (e.g., p. 2, ¶ 0005 and Fig. 5). The incentive item is different than the weighed item and the incentive identifying information is information other than any incentive code (e.g., p. 2, ¶ 0005 and Fig. 5). The incentive system also include a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products (e.g., p. 2, ¶ 0005 and Fig. 3). The computerized checkout system includes a product code reader for reading product codes (e.g., p. 2, ¶ 0005 and Fig. 3). The computerized checkout system automatically applies an appropriate price adjustment when a customer presents both the weighed item and the incentive item at checkout as determined by reading of both the product code for the weighed item and a product code for the incentive item (e.g., p. 2, ¶ 0005 and Fig. 3).

Claim 9 is directed to an incentive system within a store for providing at least one possible incentive in relation to an item purchased (e.g., p. 2, ¶ 0006 and Fig. 4). The incentive system includes a scale located in a perishables department of the store (e.g., p. 2, ¶ 0006 and Fig. 2). The scale including a weighing device for producing weight indicative signals, (e.g., p. 2, ¶ 0006 and Fig. 1) and at least one label printing mechanism for printing labels, (e.g., p. 2, ¶ 0006 and Fig. 1), the scale being adapted for operation in at least one mode in which, in connection with a weighing operation of an item (e.g., p. 2, ¶ 0006 and Fig. 1): (i) a price for the weighed item is established and printed on a product label along with a product identifier, (e.g., p. 2, ¶ 0006 and Fig. 5), and (ii) incentive identifying information is printed for at least one incentive item based upon the weighed item, where the incentive item is different than the weighed item, and the incentive identifying information is incentive code free (e.g., p. 2, ¶ 0006 and Fig. 5). The incentive system further includes a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products (e.g., p. 2, ¶ 0006 and Fig. 3). The computerized checkout system includes a product identifier input device for inputting product identifiers where the computerized checkout system automatically applies an appropriate price adjustment when a customer presents both the weighed item and the incentive item at checkout as determined by input of both the product

identifier for the weighed item and a product identifier for the at least one incentive item (e.g., p. 2, ¶ 0006 and Fig. 3).

Claim 16 is directed to an incentive system within a store for providing at least one incentive in relation to an item purchased (e.g., p. 2, ¶ 0007 and Fig. 4). The incentive system includes a packaged, random weight food product having at least one adhesive label applied thereto including price information and a store-selected product code thereon, the at least one label further including at least one incentive code free incentive printed thereon, where the incentive is for an incentive item that is different than the food product (e.g., p. 3, ¶ 0007 and Fig. 5). The incentive system also include a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products (e.g., p. 3, ¶ 0007 and Fig. 3). The computerized checkout system includes a product code input device for inputting product codes, where the computerized checkout system automatically applies an appropriate price adjustment when a customer presents both the packaged, random weight food product and the incentive item at checkout as determined by input of both the store-selected product code for the packaged, random weight food product and a product code for the incentive item (e.g., p. 3, ¶ 0007 and Fig. 3).

Claim 18 is directed to an incentive system within a store for providing multiple incentives in relation to an item purchased (e.g., p. 3, ¶ 0008 and Fig. 4). The incentive system includes a scale located in a perishables department of the store, the scale including a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, the scale adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a price for the weighed item is established and printed on a product label along with a product code, (ii) incentive identifying information printed for a plurality of incentive items based upon the weighed item along with a single incentive code, where the plurality of incentive items are different than the weighed item (e.g., p. 3, ¶ 0008 and Figs. 1, 2, 4 and 5). The incentive system also includes a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products

(e.g., p. 3, ¶ 0008 and Fig. 3). The computerized checkout system includes a code reader for reading product codes and incentive codes, wherein the computerized checkout system applies an appropriate price adjustment when each of (i) product code of at least one of the incentive items and (ii) the incentive code are read by the code reader during a customer checkout transaction, where the computerized checkout system utilizes the incentive code to identify the plurality of incentive items and to determine which of the plurality of incentive items was included in the customer checkout transaction (e.g., p. 3, ¶ 0008 and Fig. 3).

Claim 21 is directed to an incentive system within a store for providing multiple incentives in relation to an item purchased (e.g., p. 3, ¶ 0008 and Fig. 4). The incentive system includes a scale located in a perishables department of the store, the scale including a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, the scale adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a price for the weighed item is established and printed on a product label along with a product code, (ii) incentive identifying information printed for a plurality of incentive items based upon the weighed item along with an incentive code, where the plurality of incentive items are different than the weighed item (e.g., p. 3, ¶ 0008 and Figs. 1, 2, 4 and 5). The incentive system further includes a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products (e.g., p. 3, ¶ 0008 and Fig. 3). The computerized checkout system includes a code reader for reading product codes and incentive codes, wherein the computerized checkout system applies an appropriate price adjustment when each of (i) the weighed item product code, (ii) a product code of at least one of the incentive items and (iii) the incentive code are read by the code reader during a customer checkout transaction, where the computerized checkout system utilizes the incentive code to identify the plurality of incentive items and to determine which of the plurality of incentive items was included in the customer checkout transaction (e.g., p. 3, ¶ 0008 and Fig. 3).

Claim 22 is directed to an incentive system within a store for providing multiple possible incentives in relation to an item purchased (e.g., p. 4, ¶ 0009 and Fig. 4). The incentive

system includes a packaged, random weight food product having at least one adhesive label applied thereto including price information and a store-selected product code thereon, the at least one label further including multiple incentives thereon, each for a respective incentive item that is different than the food product, and an incentive code thereon (e.g., p. 4, ¶ 0009 and Fig. 5). The incentive system also includes a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system having access to an incentive database that links the incentive code to the multiple incentive items (e.g., p. 4, ¶ 0009 and Fig. 3).

Claim 28 is directed to an incentive system within a store for providing multiple possible incentives in relation to an item purchased (e.g., p. 4, ¶ 0010 and Fig. 4). The system includes a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, an input device for inputting product identifying information for weighed products (e.g., p. 4, ¶ 0010 and Fig. 1). The scale is adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a weight dependent price is established for the weighed item and the weight dependent price is printed on a product label along with a product code; (ii) a database is accessed, the database linking a plurality of incentive items to the weighed item and (iii) incentive identifying information is printed for the plurality of incentive items based upon the weighed item, wherein the scale also prints an incentive code for the plurality of incentives (e.g., p. 4, ¶ 0010 and Figs. 1 and 5). The incentive system also includes a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products (e.g., p. 4, ¶ 0010 and Fig. 3). The computerized checkout system includes a code reader for reading product codes and incentive codes, wherein the computerized checkout system applies an appropriate price adjustment when each of (i) the weighed item product code, (ii) a product code of at least one of the incentive items and (iii) the incentive code are read by the code reader during a customer checkout transaction, where the computerized checkout system utilizes the incentive code to identify the plurality of incentive items and to determine which of the plurality of incentive items was included in the customer checkout transaction (e.g., p. 4, ¶ 0010 and Fig. 3).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-6, 9-22 and 28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hewitt et al., US Patent No. 5,578,797 (*Hewitt*) in view of Sheehan, US Publication No. 2002/0178060 (*Sheehan*).

Claims 4 and 12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Hewitt* in view of *Sheehan* and in further view of AC-3000 (Ishida AC-300 Series brochure, 6 pages) (*Ishida*).

VII. ARGUMENT

A. Claims 1-6, 9-22 and 28 Are Patentable Under 35 U.S.C. § 103(a) Over The Proposed Combination of *Hewitt* and *Sheehan*

Claims 1-6, 9-22 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the proposed combination of *Hewitt* and *Sheehan*. Applicants traverse this rejection because neither *Hewitt* nor *Sheehan*, either alone or in combination, teach or suggest the pending claims.

1. Claim 1 Is Separately Patentable Under 35 U.S.C. § 103(a) Over The Proposed Combination of *Hewitt* and *Sheehan*

Claim 1 recites a computerized checkout system for applying a price adjustment when "a customer presents ***both*** the weighed item and the incentive item at checkout ***as determined by reading of both*** the product code for the weighed item and a product code for the incentive item" (emphasis added). Thus, claim 1 recites at least one requirement for the application of a price adjustment that is absent from both *Hewitt* and *Sheehan*, namely a reading of both the product code for the weighed item and the product code for the incentive item when both items are presented for purchase.

Hewitt is silent with respect to a customer obtaining a discount as determined by reading of both a weighed product and an incentive product when presented for purchase. Rather, *Hewitt* discloses a weighing scale and coupon dispensing system in which a discount is applied to a promoted item when a coupon for the promoted item and the promoted item are presented at checkout. (Col. 5, ll. 1-25). In *Hewitt*, there is no requirement that the weighed item be purchased in order to redeem the coupon for the promoted product. As recited in claim 1, however, the reading of both a weighed item and an incentive item at checkout is required in order for a price adjustment to be applied. Thus, *Hewitt* fails to teach claim 1 in at least this respect.

Sheehan does not make up for this deficiency. *Sheehan* is silent with respect to a discount being applied when both the weighed product and the incentive product are purchased. Instead, *Sheehan* discloses a discount applied to a purchased product based on electronic coupons stored in a database and associated with the purchased product:

[0116] When the consumer proceeds to the retailers and buys a product or service associated with a stored electronic coupon (Operation 1210), and presents their club card (Operation 1212) ***the retailer's system accesses the electronic coupon (which may be stored in the retailer's database at the head-end, backend or otherwise) and correlates the coupon against the items purchased (Operation 1214). When a correlation exists, the retailer's system the automatically deducts the coupon from the purchase price*** and the transaction is completed (Operation 1216). As such, in this embodiment, an electronic coupon is associated with a specific retailer (or chain of stores) such that a consumer need only utilize a club card in order to gain the benefit of an electronic coupon.

(Emphasis added.)

Accordingly, *Sheehan* does not require that a weighed item and an incentive item be purchased to receive an appropriate price adjustment as recited in claim 1.

For at least these reasons, claim 1 is patentable over the proposed combination of *Hewitt* and *Sheehan*. Applicants kindly request favorable reconsideration of claim 1. Additionally, Applicants request favorable reconsideration of claims 2-6 based at least on their dependency from claim 1.

**2. Claim 5 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of *Hewitt* and *Sheehan***

Claim 5 is patentable over the proposed combination based at least on its dependency from claim 1. Claim 5 is patentable for independent reasons as well. For instance, claim 5 recites that multiple incentive items are based upon the weighed item. Claim 5 further recites that "when the customer presents *both* the weighed item and the multiplicity of the incentive items at checkout," (emphasis added), a price adjustment is applied to each of the incentive items. Thus, claim 5 recites at least two requirements: (1) multiple incentive items are associated with the weighed item and (2) a price adjustment is applied at checkout based on the association when both the weighed item and the multiplicity of incentive items are presented.

In rejecting claim 5, the Examiner asserts that offering "multiple coupons (such as buy weighed hamburger patties – get a coupon for ketchup and a coupon for mustard) [is] a mere duplication of parts." (Final Office Action, p. 6). However, the rejection fails to show the obviousness of claim 5 for at least two reasons. First, the rejection does not address the deficiencies of *Hewitt* and *Sheehan* as described above with respect to claim 1. Claim 1 recites that a price adjustment is applied based on the reading of a weighed item and an incentive item. Second, when the combination of references fails in this respect, it cannot then be obvious to apply a price adjustment to a multiplicity of incentive items based on the presentation of the weighed item and the multiplicity of incentive items at checkout.

For at least these reasons, claim 5 is patentable over the proposed combination. Reconsideration of claim 5 is respectfully requested.

**3. Claim 9 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of Hewitt and Sheehan**

Claim 9 recites a computerized checkout system that "applies an appropriate price adjustment when a customer presents both the weighed item and the incentive item at checkout *as determined by input of both the product identifier for the weighed item and a product identifier for the at least one incentive item*" (emphasis added). Neither reference teaches the limitations of claim 9.

Hewitt discloses a weighing scale and coupon dispensing system in which a discount is applied to a promoted item when a coupon is presented at checkout. (Col. 5, ll. 1-25). *Hewitt* is silent with respect to a customer obtaining a price adjustment when the product identifier for both the weighed product and the incentive product are input at checkout. In *Hewitt*, there is no requirement that the weighed item be purchased in order to redeem the coupon for the promoted product. As recited in claim 9, however, the input of both a weighed item product identifier and an incentive item identifier at checkout is required in order for a price adjustment to be applied. *Hewitt*, at best, requires input of a coupon code for the promoted product and purchase of the promoted product in order to obtain a discount. (Col. 5, ll. 6-9). Thus, *Hewitt* fails to teach claim 9 in at least these respects.

Sheehan does not make up for this deficiency. *Sheehan* is silent with respect to a price adjustment being applied as determined by the input of the product identifiers for both the weighed product and the incentive product. At best, *Sheehan* discloses a price adjustment applied when a promoted product code is input. The discount is then obtained based on electronic coupons stored in a database and associated with the purchased product:

[0116] When the consumer proceeds to the retailers and buys a product or service associated with a stored electronic coupon (Operation 1210), and presents their club card (Operation 1212) *the retailer's system accesses the electronic coupon (which may be stored in the retailer's database at the head-end, backend or*

otherwise) and correlates the coupon against the items purchased (Operation 1214). When a correlation exists, the retailer's system the automatically deducts the coupon from the purchase price and the transaction is completed (Operation 1216). As such, in this embodiment, an electronic coupon is associated with a specific retailer (or chain of stores) such that a consumer need only utilize a club card in order to gain the benefit of an electronic coupon.

(Emphasis added.)

Accordingly, *Sheehan* does not require that a weighed item product code and an incentive item product code be input to receive an appropriate price adjustment as recited in claim 9.

Applicants respectfully request favorable reconsideration of claim 9 and the rejection be withdrawn. Additionally, claims 10-15 are also patentable based at least on their dependency from claim 9. For at least these reasons, claims 9-15 are allowable over the proposed combination.

**4. Claim 13 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of *Hewitt* and *Sheehan***

Claim 13 is patentable over the proposed combination based at least on its dependency from claim 9. Claim 13 is patentable for independent reasons as well. For instance, claim 13 recites that incentive identifying information is printed for multiple incentive items based upon the weighed item. Claim 13 further recites that "when the customer presents ***both*** the weighed item and the multiplicity of the incentive items at checkout," (emphasis added), a price adjustment is applied to each of the incentive items. Thus, claim 13 recites at least two requirements: (1) multiple incentive items are associated with the weighed item and (2) a price adjustment is applied at checkout based on the association when both the weighed item and the multiplicity of incentive items are presented.

In rejecting claim 13, the Examiner asserts that offering "multiple coupons (such as buy weighed hamburger patties – get a coupon for ketchup and a coupon for mustard) [is] a mere duplication of parts." However, the rejection fails to show the obviousness of claim 13 for at least two reasons. First, the rejection does not address the deficiencies of *Hewitt* and *Sheehan* as described above with respect to claim 9. Claim 9 recites that a price adjustment is applied based on the input of a product identifier for both a weighed item and an incentive item. Second, when the combination fails in this respect, it cannot then be obvious to apply a price adjustment to a multiplicity of incentive items based on the presentation of the weighed item and the multiplicity of incentive items at checkout.

For at least these reasons, claim 13 is patentable over the proposed combination. Reconsideration of claim 13 is respectfully requested.

**5. Claim 16 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of *Hewitt* and *Sheehan***

Claim 16 is patentable over the proposed combination. Claim 16 recites that "the computerized checkout system automatically applies an appropriate price adjustment when a customer presents *both the packaged, random weight food product and the incentive item at checkout as determined by input of both the store-selected product code for the packaged, random weight food product and a product code for the incentive item*" (emphasis added). Neither reference teaches the limitations of claim 16.

Hewitt discloses a weighing scale and coupon dispensing system in which a discount is applied to a promoted item when a coupon is presented at checkout. (Col. 5, ll. 1-25). *Hewitt* is silent with respect to a customer obtaining a price adjustment when the store-selected product codes for both the weighed product and the incentive product are input at checkout. In *Hewitt*, there is no requirement that the weighed item be purchased in order to redeem the coupon for the promoted product. As recited in claim 16, however, the input at checkout of both

a store-selected product code for the weighed item and a product code for the incentive item is required in order for a price adjustment to be applied. *Hewitt*, at best, requires input of a coupon code for the promoted product and purchase of the promoted product in order to obtain a discount. (Col. 5, ll. 6-9). Thus, *Hewitt* fails to teach claim 16 in at least these respects.

Sheehan does not make up for this deficiency. *Sheehan* is silent with respect to a price adjustment being applied as determined by the input at checkout of the product codes for both the weighed product and the incentive product. At best, *Sheehan* discloses a discount applied when a promoted product code is input. The discount is then obtained based on electronic coupons stored in a database and associated with the purchased product:

[0116] When the consumer proceeds to the retailers and buys a product or service associated with a stored electronic coupon (Operation 1210), and presents their club card (Operation 1212) ***the retailer's system accesses the electronic coupon (which may be stored in the retailer's database at the head-end, backend or otherwise) and correlates the coupon against the items purchased (Operation 1214). When a correlation exists, the retailer's system the automatically deducts the coupon from the purchase price*** and the transaction is completed (Operation 1216). As such, in this embodiment, an electronic coupon is associated with a specific retailer (or chain of stores) such that a consumer need only utilize a club card in order to gain the benefit of an electronic coupon.

(Emphasis added.)

Accordingly, *Sheehan* does not require that a weighed item product code and an incentive item product code be input to receive a discount as recited in claim 16. For at least these reasons, the proposed combination fails to teach the limitations of claim 16.

Applicants request favorable reconsideration of claim 16 and the rejection be withdrawn. Furthermore, Applicants also request favorable reconsideration of claim 17 based on its dependency from claim 16.

**6. Claim 18 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of *Hewitt* and *Sheehan***

Claim 18 recites that a single incentive code associated with a plurality of incentive items is printed in connection with a weighing operation of an item. While *Hewitt* discloses the use of a coupon code for an incentive item, *Hewitt* does not teach a single incentive code for identifying a plurality of incentive items. At best, there is only one code for one incentive item associated with a weighed product. (Figure 6A and col. 5, ll. 20-27). Furthermore, contrary to the Examiner's argument, claim 18 recites further subject matter than merely providing multiple incentives for a single, weighed product. (Final Office Action, p. 6). In claim 18, identification of a plurality of incentive items is based upon a weighed product and identified by a single incentive code. Thus, *Hewitt* fails to teach claim 18 in at least these respects.

Sheehan does not make up for the deficiency in *Hewitt*. *Sheehan* discloses processing multiple electronic coupons through the use of a club card or checking an electronic coupon database. (Paragraph 0021). In either case (i.e., using a club card or simply "checking" an electronic coupon database), *Sheehan* fails to teach the limitations of claim 18 because *Sheehan* does not disclose a "weighing operation" as recited in claim 18. Thus, the single incentive code for identifying the plurality of incentive items is not printed "in connection with a weighing operation of an item." Thus, the proposed combination fails to teach claim 18.

Additionally, there is no reason to combine *Hewitt* with *Sheehan* in the manner proposed by the Examiner. *Hewitt* discloses a paper coupon dispensing system for dispensing paper coupons based on the weighing of an item. (Col. 5, ll. 1-25). *Sheehan* discloses an electronic database of coupons for redemption by a customer using a club card at a point-of-sale terminal. (Paragraph 0019). Based on the disparate forms of incentive dispensing systems disclosed in these references, one of ordinary skill in the art would not have a reason to combine these references in a manner suggested by the Examiner.

For at least these reasons, claim 18 is allowable over the proposed combination. Favorable reconsideration is respectfully requested. Furthermore, reconsideration of claim 19 and 20, which depend from claim 18, is also requested.

**7. Claim 21 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of *Hewitt* and *Sheehan***

Claim 21 is patentable over the proposed combination for at least the reasons set forth above with respect to claim 18. Accordingly, Applicants respectfully request favorable reconsideration of claim 18 and the rejection be withdrawn.

**8. Claim 22 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of *Hewitt* and *Sheehan***

Claim 22 recites that at least one adhesive label has printed on it an incentive code that is linked with multiple incentive items. While *Hewitt* discloses the use of a coupon code for an incentive item, there is only one code for one incentive item associated with a weighed product. (Figure 6A and col. 5, ll. 20-27). Thus, *Hewitt* fails to teach claim 22 in at least this respect. *Sheehan* fails to make up for the deficient teachings of *Hewitt*. *Sheehan* discloses the use of a club card for processing all electronic coupons. (Paragraph 0021). By using a club card, however, the single incentive code is not printed on an adhesive label as recited in claim 22. Therefore, the combination fails to teach the limitations of claim 22.

The proposed combination is improper for additional reasons. First, one of ordinary skill in the art would have no reason to combine *Hewitt* with *Sheehan* to provide the subject matter of claim 22 because *Hewitt* and *Sheehan* teach disparate incentive dispensing systems. (*Hewitt*, Figure 6A and *Sheehan*, paragraphs 0018 – 0021). Second, *Sheehan* teaches away from the use of paper coupons, as is disclosed in *Hewitt*, by referring to paper coupons as "bulky, troublesome, and generic traditional coupons." (Paragraph 0018).

Thus, for at least these reasons, claim 22 is patentable over the proposed combination of references. Applicants kindly request favorable reconsideration of claim 22.

**9. Claim 28 Is Separately Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of Hewitt and Sheehan**

Claim 28 recites that "the scale also prints an incentive code for the plurality of incentives" in connection with a weighing operation of an item. While *Hewitt* discloses the use of a coupon code for an incentive item, there is only one code for one incentive item associated with a weighed product. (Figure 6A and col. 5, ll. 20-27). Furthermore, contrary to the Examiner's argument, claim 28 recites further subject matter than merely providing multiple incentives for a single, weighed product. (Final Office Action, p. 6). In claim 28, a plurality of incentive items are associated with a weighed product and identified by a single incentive code. Thus, *Hewitt* fails to teach claim 28 in at least these respects.

Sheehan does not make up for the deficiency in *Hewitt*. *Sheehan* discloses processing multiple electronic coupons through the use of a club card or checking an electronic coupon database. (Paragraph 0021). In either case (i.e., using a club card or simply "checking" an electronic coupon database), *Sheehan* fails to teach the limitations of claim 28 because *Sheehan* does not disclose a "weighing operation" as recited in claim 28. Thus, the single incentive code for identifying the plurality of incentive items is not printed "in connection with a weighing operation of an item." Thus, the proposed combination fails to teach claim 28.

For at least these reasons, claim 28 is allowable over the proposed combination. Favorable reconsideration is respectfully requested.

**B. Claims 4 and 12 Are Patentable Under 35 U.S.C. § 103(a)
Over The Proposed Combination of Hewitt, Sheehan and Ishida**

Claims 4 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the proposed combination of *Hewitt*, *Sheehan* and *Ishida*. Applicants traverse this rejection because the proposed combination fails to teach or suggest the pending claims. Claims 4 and 12 depend from claims 1 and 9, respectively. Claims 1 and 9 are patentable for the reasons stated above. Furthermore, *Ishida* fails to make up for the deficiencies in *Hewitt* or *Sheehan*. Accordingly, claims 4 and 12 are also allowable. Applicants kindly request favorable reconsideration of the pending claims.

The Appeal Brief fee of \$540 along with a 2 month Petition for Extension of Time fee of \$490 as applicable under the provisions of 37 C.F.R. §41.20(b)(2) are being charged to Deposit Account No. 02-3978 via electronic authorization submitted concurrently herewith. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments associated with this filing to Deposit Account No. 02-3978.

Respectfully submitted,

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Enclosure - Appendices

VIII. CLAIMS APPENDIX

1. An incentive system within a store for providing at least one incentive in relation to an item purchased, the incentive system comprising:

a scale located in a department of the store, the scale including a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, an input device for inputting product identifying information for weighed products, the scale adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a weight dependent price is established for the weighed item and the weight dependent price is printed on a product label along with a product code; and (ii) incentive identifying information is printed for at least one incentive items based upon the weighed item, the incentive item is different than the weighed item and the incentive identifying information is information other than any incentive code;

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system including a product code reader for reading product codes, wherein the computerized checkout system automatically applies an appropriate price adjustment when a customer presents both the weighed item and the incentive item at checkout as determined by reading of both the product code for the weighed item and a product code for the incentive item.

2. The incentive system of claim 1 wherein the incentive identifying information is printed on the product label.

3. The incentive system of claim 1 wherein the incentive identifying information is printed on a label separate from the product label.

4. The incentive system of claim 1 wherein the scale includes at least one other printing mechanism with non-label media and the incentive identifying information is printed on non-label media.

5. The incentive system of claim 1 wherein the scale is adapted such that incentive identifying information is printed for multiple incentive items based upon the weighed item, where each of the incentive items is different than the weighed item, and when the customer presents both the weighed item and a multiplicity of the incentive items at checkout, the computerized checkout system automatically applies an appropriate price adjustment corresponding to each of the multiplicity of incentive items.

6. The incentive system of claim 1 wherein the product code for the weighed item comprises at least part of a bar code and wherein the product code for the at least one incentive item comprises at least part of a bar code, and the product code reader comprises a bar code scanner.

9. An incentive system within a store for providing at least one possible incentive in relation to an item purchased, the incentive system comprising:

a scale located in a perishables department of the store, the scale including a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, the scale adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a price for the weighed item is established and printed on a product label along with a product identifier and (ii) incentive identifying information is printed for at least one incentive item based upon the weighed item, where the incentive item is different than the weighed item, and the incentive identifying information is incentive code free;

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system including a product identifier input device for inputting product identifiers, where the computerized checkout system automatically applies an appropriate price adjustment when a customer presents both the weighed item and the incentive item at checkout as determined by input of both the product identifier for the weighed item and a product identifier for the at least one incentive item.

10. The incentive system of claim 9 wherein the incentive identifying information is printed on the product label.

11. The incentive system of claim 9 wherein the incentive identifying information is printed on a label separate from the product label.

12. The incentive system of claim 9 wherein the scale includes at least one other printing mechanism with non-label media and the incentive identifying information is printed on non-label media.

13. The incentive system of claim 9 wherein the scale is adapted such that incentive identifying information is printed for multiple incentive items based upon the weighed item, where each of the incentive items is different than the weighed item, and when the customer presents both the weighed item and a multiplicity of the incentive items at checkout, the computerized checkout system automatically applies an appropriate price adjustment corresponding to each of the multiplicity of incentive items.

14. The incentive system of claim 9 wherein the product identifier for the weighed item comprises at least part of a bar code and wherein the product code for the at least one incentive item comprises at least part of a bar code, and the product identifier input device comprises a bar code scanner.

15. The incentive system of claim 9 wherein the incentive identifying information for the incentive items includes information identifying a location of the incentive item within the store.

16. An incentive system within a store for providing at least one incentive in relation to an item purchased, the incentive system comprising:

a packaged, random weight food product having at least one adhesive label applied thereto including price information and a store-selected product code thereon, the at least one label further including at least one incentive code free incentive printed thereon, where the incentive is for an incentive item that is different than the food product;

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system including a product code input device for inputting product codes, where the computerized checkout system automatically applies an appropriate price adjustment when a customer presents both the packaged, random weight food product and the incentive item at checkout as determined by input of both the store-selected product code for the packaged, random weight food product and a product code for the incentive item.

17. The incentive system of claim 16 wherein the at least one label comprises both a product label and an incentive label, the product label includes the price information and the store-selected product code thereon, the incentive label includes the incentive thereon.

18. An incentive system within a store for providing multiple incentives in relation to an item purchased, the incentive system comprising:

a scale located in a perishables department of the store, the scale including a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, the scale adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a price for the weighed item is established and printed on a product label along with a product code, (ii) incentive identifying information printed for a plurality of incentive items based upon the weighed item along with a single incentive code, where the plurality of incentive items are different than the weighed item;

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system including a code reader for reading product codes and incentive codes, wherein the computerized checkout system applies an appropriate price adjustment when each of (i) product code of at least

one of the incentive items and (ii) the incentive code are read by the code reader during a customer checkout transaction, where the computerized checkout system utilizes the incentive code to identify the plurality of incentive items and to determine which of the plurality of incentive items was included in the customer checkout transaction.

19. The incentive system of claim 18 wherein the computerized checkout system accesses a database to identify incentive items associated with the incentive code.

20. The incentive system of claim 18 wherein when product codes for a multiplicity of the incentive items are read by the code reader, the computerized checkout system applies an appropriate price adjustment corresponding to each of the multiplicity of incentive items.

21. An incentive system within a store for providing multiple incentives in relation to an item purchased, the incentive system comprising:

a scale located in a perishables department of the store, the scale including a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, the scale adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a price for the weighed item is established and printed on a product label along with a product code, (ii) incentive identifying information printed for a plurality of incentive items based upon the weighed item along with an incentive code, where the plurality of incentive items are different than the weighed item;

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system including a code reader for reading product codes and incentive codes, wherein the computerized checkout system applies an appropriate price adjustment when each of (i) the weighed item product code, (ii) a product code of at least one of the incentive items and (iii) the incentive code are read by the code reader during a customer checkout transaction, where the computerized checkout system utilizes the incentive code to identify the plurality of incentive items and to

determine which of the plurality of incentive items was included in the customer checkout transaction.

22. An incentive system within a store for providing multiple possible incentives in relation to an item purchased, the incentive system comprising:

a packaged, random weight food product having at least one adhesive label applied thereto including price information and a store-selected product code thereon, the at least one label further including multiple incentives thereon, each for a respective incentive item that is different than the food product, and an incentive code thereon;

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system having access to an incentive database that links the incentive code to the multiple incentive items.

28. An incentive system within a store for providing multiple possible incentives in relation to an item purchased, the system comprising:

a weighing device for producing weight indicative signals, at least one label printing mechanism for printing labels, an input device for inputting product identifying information for weighed products, wherein the scale is adapted for operation in at least one mode in which, in connection with a weighing operation of an item: (i) a weight dependent price is established for the weighed item and the weight dependent price is printed on a product label along with a product code; (ii) a database is accessed, the database linking a plurality of incentive items to the weighed item and (iii) incentive identifying information is printed for the plurality of incentive items based upon the weighed item, wherein the scale also prints an incentive code for the plurality of incentives; and

a computerized checkout system for determining a total price due for a given customer transaction involving a plurality of products, the computerized checkout system including a code reader for reading product codes and incentive codes, wherein the computerized checkout system applies an appropriate price adjustment when each of (i) the weighed item product code, (ii) a product code of at least one of the incentive items and (iii) the incentive code

are read by the code reader during a customer checkout transaction, where the computerized checkout system utilizes the incentive code to identify the plurality of incentive items and to determine which of the plurality of incentive items was included in the customer checkout transaction.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.